

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Ramar Communications II, Ltd.)	Facility I.D. No. 27431
Licensee of Station KUPT(TV))	NAL/Acct. No. 0741420014
Hobbs, New Mexico)	FRN: 0004249850

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: February 12, 2007

Released: February 14, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Ramar Communications II, Ltd. (the "Licensee"), licensee of Station KUPT(TV), Hobbs, New Mexico (the "Station"), apparently violated Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii) of the Rules, by failing to place all required records concerning its compliance with the children's programming commercial limits and by failing to publicize the existence and location of the Station's Children's Television Programming Reports and Section 73.673 of the Rules by failing to identify for program guide publishers the Station's core programming and the age groups for which those programs were intended.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) for its violations of Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii), and we admonish the Licensee for its violation of Section 73.673.

II. BACKGROUND

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁴ Pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee's certification, in its renewal application, of its compliance with the children's television commercial limits imposed by Section 73.670 of the Rules.⁵ Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3526(e)(11)(ii), 73.3526(e)(11)(iii), and 73.673.

⁴ See 47 C.F.R. § 73.3526.

⁵ 47 C.F.R. § 73.670.

undertaken by the licensee, excuse or nullify the licensee's rule violation.⁶

3. Further, under the Commission's rules implementing the Children's Television Act of 1990 (CTA),⁷ each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).⁸ The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Subsection 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in Subsection 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports. In addition, licensees are required to provide to publishers of program guides, information identifying programming specifically designed to educate and inform children, including an indication of the age group for which the program is intended.⁹

4. On June 1, 2006, the Licensee filed its license renewal application for Station KUPT(TV) (the "Application.") (File No. BRCT-20060601ACP). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17, it indicated that in its review of the public inspection file, it discovered that its records concerning compliance with the commercial limits in children's programming for the second through the fourth quarters of 2001, all of 2002, and the first through the third quarters of 2003 were missing.

5. In addition, in response to Section IV, Question 10 of the Application, the Licensee stated that it had failed to publicize the existence and location of the Station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24, it reported that it publicized the existence and location of the Station's Children's Television Programming Reports from the beginning of the license term until November 2002. The Licensee indicated that by November 2002, the Station had installed a new traffic system and the announcements regarding the existence and location of the Children's Television Programming Reports were inadvertently not programmed into the new system. The Licensee asserted that upon discovery of this omission in December 2005, it implemented procedures to ensure future compliance.

6. Moreover, in Exhibit 23, the Licensee reported that although it provided to publishers of program guides, programming schedules that included the Station's children's programming, it "failed to identify those programs that were specifically designed to educate and inform children, and the age groups for which those programs were intended," as required by Section 73.673 of the Rules. The Licensee claimed that this error was corrected on April 16, 2001.

III. DISCUSSION

7. The Licensee's failure to place in its Station KUPT(TV) public inspection file all required records concerning its compliance with the children's programming commercial limits, and its

⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

⁷ Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. Sections 303a, 303b and 394.

⁸ 47 C.F.R. § 73.671.

⁹ 47 C.F.R. § 73.673.

failure to publicize the existence and location of the Station's Children's Television Programming Reports constitutes a willful and repeated violation of Section 73.3526(e)(11)(iii). This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹⁴

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.¹⁵ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁶

9. In this case, the Licensee reported that its records concerning its compliance with the children's programming commercial limits for the second through the fourth quarters of 2001, all of 2002, and the first through the third quarters of 2003 were missing. Moreover, the Licensee acknowledged that it failed to publicize the existence and location of the Station's Children's Television Programming Reports from November 2002 until December 2005. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its failure to place all required records concerning its compliance with the children's programming commercial limits in the public inspection file in apparent willful and repeated violation of Section 73.3526(e)(11)(ii), and the amount of \$3,000 for its failure to publicize the existence and location of the Station's Children's Television Programming Reports for more than three years in apparent willful and repeated violation of Section 73.3526(e)(11)(iii), for a total proposed forfeiture in the amount of \$13,000. Finally, we believe that an admonishment is warranted for the Licensee's violation of Section 73.673.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Ramar Communications II, Ltd. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(ii)

¹⁰ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

¹¹ 47 U.S.C. § 312(f)(1).

¹² *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁶ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

and 73.3526(e)(11)(iii) of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Ramar Communications II, Ltd. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁷

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ramar Communications II, Ltd., 9800 University Avenue, Lubbock, Texas 79423, and to its counsel, Dennis P. Corbett, Esq., Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief, Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.